IN THE HIGH COURT OF DELHI AT NEW DELHI

CM NO. 1157/2000 in RFA NO. 476/2000

HOSHIAR SINGH .....Appellant
Through Mr.R.K. Gupta with Mr. V.K. Anand.

Versus

SMT. SAROJ DEVI & ORS. ....Respondent
Through Mr. I.P. Singh and Mr. Sanjay Rathi.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.K. SIKRI

ORDER
22.4.2003

Appellants have preferred this application, inter alia, requesting the Court to condone the delay of 294 days in preferring the appeal. On notice being issued on behalf of the respondent, reply is filed pointing out that the appellants have hopelessly failed to explain the delay in the matter.

It is contended by the appellant that after 17.3.1999, the appellant never appeared in the Trial Court as his counsel instructed him that his appearance is no more required. It is also stated that the advocate informed that as and when the judgment will be pronounced, the appellant will be informed. The appellant has further averred that on 31.7.1999, the son of the appellant and original

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Certify that the digital file and physical file have been compared the digital data is as per the physical file

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defendant no.2 appeared before the Trial Court at the time when judgment was pronounced after calling out the case. The appellant has come out with the case that his son was told that the case of the plaintiff had been dismissed by stating that *"CASE TUMHARE HAQ MEIN DISMISS HO GAYA HAI."*

It is further alleged that only on 25.7.2000, when grand daughter-in-law informed about the papers having been pasted, the appellant came to know about the order made by the Court. For this purpose, he approached an educated person of the village. Thereafter, on 26.7.2000, the appellant contacted his advocate. He has come out with the case that the advocate picked up a quarrel and created a scene in his chamber. It is further stated that in a loud voice, appellant was told that he should have come earlier as the case of the plaintiff was dismissed against him in 1999. On request being made, after one week, file was returned on 4.8.2000. He got the file scrutinised through his relative who is an educated person and he was told that the certified copy of the judgment and decree dated 31.7.1999 was also lying in the file besides other papers. ~~It is, thereafter,~~ Before this, the appellant contacted another advocate on telephone and requested him to appear on his behalf on 28.7.2000. On 28.7.2000, appellant came to know through the second advocate about the order made on

31.7.1999 and the execution proceedings and attachment proceedings. He also came to know on that day that agricultural land admeasuring 21 bighas had been attached on 19.2.2000.

It is admitted by the appellant that judgment was pronounced on 31.7.1999 and certified copy was delivered on 8.9.1999. The appeal could not be preferred within 90 days for the reasons stated here-in-above and request is made to the Court to condone the delay.

Father and son both were the defendants before the Trial Court. So far as the son is concerned, suit has been dismissed and so far as the father is concerned, (namely the appellant), against him, decree has been passed by the Trial Court. It is made clear before us that father and son are residing under the same roof and were defended by the same counsel before the Trial Court. The appellant in his application has come out with the case that the appellant ~~should~~ was advise ~~him~~ not to come to the Court on account of his age and had a quarrel with him at a ~~little~~ later point of time. It is also required to be noted that son was present in the Court when the judgment was pronounced. It is interesting to note that the appellant has nowhere stated as to who conveyed the son about the dismissal of the suit in his favour. Appellant has not filed the affidavit of his

son. Appellant has not bothered to file the affidavit of the advocate either. Even after the affidavit and reply has been filed by the respondent herein, affidavit of the son is not filed.

It is required to be noted that the respondent in the affidavit has pointed out that order of attachment was made on 21.1.2000 and compliance report was to be filed by 25.2.2000. *Tehsildar* was directed to identify the land. The respondent has pointed out in his affidavit that as per the bailiff's report dated 19.2.2000, the appellants land was duly identified on 19.2.2000 on the spot in the presence of the appellant's son namely Shri Jagdish. Respondent has also pointed out that copy of the Court's order was also produced on the spot on 19.2.2000 before proceeding with the attachment. However, said Jagdish declined to accept the Court's order. The respondent has also pointed out that in the Memorandum of Appeal, it is also clearly mentioned that Jagdish, the son of the appellant was very much present when attachment proceedings were carried out on 19.2.2000. It is in view of these facts, the learned counsel for the respondent rightly submitted that it is absolutely false to state that appellant had no knowledge whatsoever about the judgment and decree prior to 26.7.2000.

If the advocate had applied for a certified copy of the judgment soon after

the decree and was kept in the file of the case concerned, it is difficult to believe that the advocate was not taking interest in the case. It was for the appellant to make inquiry. It was for the son who was residing in the same house to inform his father. It was for the son to convey to his father about the attachment of the property as he was present at the time of attachment. Learned counsel for the respondent pointed out that with a view to get the benefit of Section 5 of the Limitation Act, the appellant is required to explain the delay. He must explain by rendering sufficient cause and the cause must be such that is acceptable to the Court. In the instant case, the appellant was negligent throughout. Not only that, he was aware about the execution proceedings and from his conduct, it is required to be noted that he was aware about the judgment and decree also because his son, who was defendant no. 2 was present in the Court. When respondent has filed affidavit in detail pointing out the knowledge and the circumstances placed on record to draw the inferences that the appellant had knowledge about it, there is no reason why the application should be accepted.

Learned counsel for the respondent submitted that Apex Court has depricated the method of putting entire blame on the advocate and trying to making out as if the litigant was totally unaware about the nature and significance of the proceedings. In case of *Salil Dutta Vs. T.M. & M.C. Private Ltd.* reported in JT 1993 (4) SC 528, the Apex Court had an occasion to deal with these aspects. It is pointed out that the advocate is the agent of the party. His acts

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and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. Apex Court in the said case pointed out that no advocate worth his salt would give such advice to his client as in the instant case, it is stated that he was advised not to meet the advocate. The Apex Court in para 8 of the judgment ultimately pointed out that:-

> "Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted."

In the instant case, who was the educated person who explained not once but twice is not made known. The affidavit of such an educated person has not been filed. The affidavit of the son is not filed. But in the reply, it is pointed out that his son was present at the time of attachment. There is also nothing to indicate as to why even after 25.7.2000 when the appellant allegedly came to know of the judgment

what was the reason for the appellant not to approach the Court immediately. In our opinion, the theory cannot be accepted and there is a gross negligence on the part of the appellant at every stage and therefore the application for condonation of delay is rejected. Consequently, appeal and other applications being CM Nos. 1156/2000 & 1158/2000 also stand dismissed.

CHIEF JUSTICE

A.K. SIKRI, J.

APRIL 22, 2003
PC.

This correction has been carried out in Computer.
26.4.03.

CMP 547/03 for release of amount of FDR to the respondent.

Fresh Application
CM 16632/17 for release of amount to applicants/respondents No 2 to 4